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9 Attorneys for USACM Liquidating Trust

10 **UNITED STATES BANKRUPTCY COURT**  
 11 **DISTRICT OF NEVADA**

12 In re:

13 USA COMMERCIAL MORTGAGE COMPANY,  
 14 USA CAPITAL REALTY ADVISORS, LLC,  
 15 USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
 16 LLC,

17 USA CAPITAL FIRST TRUST DEED FUND, LLC,

18 USA SECURITIES, LLC,

Debtors.

19 **Affects:**

- 20 .. All Debtors
- 21  USA Commercial Mortgage Company
- 22 .. USA Capital Realty Advisors, LLC
- 23 .. USA Capital Diversified Trust Deed Fund, LLC
- 24 .. USA Capital First Trust Deed Fund, LLC
- 25 .. USA Securities, LLC

26 Case No. BK-S-06-10725-LBR  
 1 Case No. BK-S-06-10726-LBR  
 2 Case No. BK-S-06-10727-LBR  
 3 Case No. BK-S-06-10728-LBR  
 4 Case No. BK-S-06-10729-LBR

5 **CHAPTER 11**

6 Jointly Administered Under Case No. BK-S-06-  
 7 10725 LBR

8 **OMNIBUS OBJECTION OF THE USACM**  
 9 **LIQUIDATING TRUST TO COMMISSION**  
 10 **CLAIMS ASSERTING PRIORITY STATUS**

11 Hearing Date: April 26. 2007  
 12 Hearing Time: 9:30 a.m.

13 The USACM Liquidating Trust (the "USACM Trust") hereby files its Omnibus  
 14 Objection to Commission Claims Asserting Priority Status ("Objection") and moves this  
 15 Court, pursuant to section 502 of title 11 of the United States Code (the "Bankruptcy  
 16 Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy  
 17 Rules"), for an order denying priority status to approximately 11 alleged priority Claims  
 18 filed by former loan brokers (or their assignees) asserting Claims against USA  
 19 Commercial Mortgage Company ("USACM") that aggregate over \$207,000. The  
 20 USACM Trust is not, by this filing, objecting at this time to any of the Claims as  
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1 unsecured Claims, but reserves the right to do so. This Objection is supported by the  
2 Court's record and explained in the following Memorandum.  
3

4 **I. JURISDICTION**

5 1. The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334  
6 and 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core  
7 proceeding under 28 U.S.C. § 157(b)(2)(B).

8 2. The statutory predicate for the relief requested herein are 11 U.S.C. § 502  
9 and Bankruptcy Rule 3007.

10 **II. BACKGROUND**

11 1. On April 13, 2006 (“Petition Date”), USACM, USA Securities, LLC (“USA  
12 Securities”), USA Capital Realty Advisors, LLC (“USA Realty”), USA Capital  
13 Diversified Trust Deed Fund, LLC (“DTDF”), USA Capital First Trust Deed Fund, LLC  
14 (“FTDF” and together with DTDF, the “Funds”) (collectively the “Debtors”), filed  
15 voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors  
16 continued to operate their businesses, if any, as debtors-in-possession pursuant to sections  
17 1107(a) and 1108 of the Bankruptcy Code. Post-petition management of the Debtors was  
18 under the direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC  
19 (“Mesirow”), who serves as the Chief Restructuring Officer.

20 2. USACM is a Nevada Corporation that, prior to the Petition Date, was in the  
21 business of underwriting, originating, brokering, funding and servicing commercial loans  
22 primarily secured by real estate, both on behalf of investors and for its own account.

23 3. This business included the solicitation of individual investors to purchase  
24 fractional interest in loans that USACM originated and then serviced. These investors,  
25 totaling approximately 3,600 as of the Petition Date, are referred to as “Direct Lenders” in  
26 USACM’s bankruptcy case and in this Objection.

1       4. Although USACM serviced and sometimes originated the loans in which the  
2 Direct Lenders invested, USACM was not a borrower on these loans.

3       5. On September 14, 2006, the Court entered its Order Setting Deadline to File  
4 Proofs of Claim and Proofs of Interest (the "Bar Date Order") [Docket No. 1280]. The  
5 Bar Date Order established 5:00 p.m., prevailing Pacific Time, on November 13, 2006, as  
6 the deadline ("Bar Date") for creditors to file proof of claims

7       6. On September 25, 2006, the Debtors served a copy of the Bar Date Order on  
8 their service lists [Docket No. 1358]. All Direct Lenders were served with a copy of the  
9 Bar Date order as well [Docket No. 1358].

10      7. On November 6, 2006, a stipulation was filed and an order entered extending  
11 the Bar Date for Direct Lenders only to file proofs of claim until January 13, 2007 [Docket  
12 No. 1729].

13      8. On January 8, 2007, this Court entered its Order Confirming the "Debtors'  
14 Third Amended Joint Chapter 11 Plan of Reorganization" [Docket No. 2376].

15      9. Debtors' Third Amended Chapter 11 Plan of Reorganization (the "Plan")  
16 [Docket No. 1799] provides the following deadlines for objections to Claims:

17           (A) for any and all Claims and Equity Interests to which the  
18 General Bar Date applies, ninety (90) days after the Effective Date; (B) for  
19 any and all Claims to which the Administrative Claims Bar Date or the  
20 Professionals Administrative Bar Date applies, thirty (30) days after the  
21 expiration of the respective Bar Date; and (C) for any and all Claims to  
22 which the Bar Date applicable under section B.3 of Art. V of the Plan  
23 applies, thirty (30) days after the expiration of that Bar Date.

24      10. USACM's claims and noticing agent received approximately 2,436 proofs of  
25 claim as of the January 13, 2007 Bar Date, asserting claims totaling more than  
26 \$997,000,000, plus unknown amounts based on unliquidated Claims.

27      11. Under the Plan, the USACM Trust is the successor to USACM with respect  
28 to standing to seek allowance and disallowance of Claims.

1       12. The USACM Trust exists as of the Effective Date of the Plan, which was  
2 March 12, 2007. Geoffrey L. Berman is the Trustee.

3       13. Several former loan brokers (or their assignees) filed 11 proofs of claim  
4 against USACM seeking commissions and asserting priority status, as listed on Exhibit A  
5 hereto (the “Commission Claims”).

6       14. The USACM Trust believes that brokers were involved in many instances in  
7 the solicitation of investments into non-performing loans and/or the assignment of certain  
8 Direct Lenders into or out of investments in non-performing loans, possibly in violation of  
9 Nevada law, and that brokers may not be entitled to any commissions purportedly earned  
10 by such activities. In this Objection, however, the USACM Trust only contends that the  
11 Commission Claims are not entitled to priority status and that they should be reclassified  
12 as general unsecured Claims (albeit subject to potential further objection).

### 13           III. APPLICABLE AUTHORITY

14       1. Under the Bankruptcy Code, any Claim for which a proof of claim has been  
15 filed will be allowed unless a party in interest objects. If a party in interest objects to the  
16 proof of claim, the Court, after notice and hearing, shall determine the amount of the  
17 Claim and shall allow the Claim except to the extent that the Claim is “unenforceable  
18 against the debtor . . . under any . . . applicable law for a reason other than because such  
19 claim is contingent or unmatured.” 11 U.S.C. § 502(b).

20       2. The USACM Trust is entitled to object to proofs of claim under 11 U.S.C.  
21 § 502(a). This objection is timely under the confirmed Plan.

22       3. A properly filed proof of claim is presumed valid under Bankruptcy Rule  
23 3001(f). However, once an objection to the proof of claim controverts the presumption,  
24 the creditor ultimately bears the burden of persuasion as to the validity and amount of the  
25 Claim. *See Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*,  
26 178 B.R. 222, 226 (B.A.P. 9<sup>th</sup> Cir. 1995), *aff'd*, 91 F.3d 151 (9<sup>th</sup> Cir. 1996). The ultimate

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1 burden of proof as to the validity of a proof of claim “remains at all times upon the  
2 claimant.” *Lundell v. Anchor Constr. Specialists, Inc. (In re Lundell)*, 223 F.3d 1035,  
3 1039 (9<sup>th</sup> Cir. 2000).

5 **IV. OBJECTIONS TO CLAIMS**

6 1. As more particularly described herein, the USACM Trust seeks in this  
7 Objection the reclassification of the Commission Claims as general unsecured Claims.

8 2. These Claims may be the subject of multiple objections herein for any of the  
9 reasons stated in this Objection. These Claims may also be subject to prior or  
10 subsequently filed objections.

11 3. The USACM Trust reserves the right to further object to any and all Claims,  
12 whether or not the subject of this Objection, for allowance and/or distribution purposes on  
13 any other grounds. The USACM Trust further reserves the right to modify, supplement  
14 and/or amend this Objection as it pertains to any Claim or claimant herein.

15 4. As explained, many of the loans brokered by USACM brokers involved the  
16 solicitation of investments into non-performing loans, possibly in violation of Nevada law,  
17 The USACM Trust believes that the Commission Claims listed on **Exhibit A** are not  
18 entitled to priority status, and may not be allowable at all as Claims against USACM.  
19 However, this Objection is limited only to the priority status of the Claims. As noted  
above, USACM reserves all other objections to these Claims.

20 **V. CONCLUSION**

21 For the reasons discussed above, the USACM Trust objects to the priority status  
22 asserted in the proofs of claim listed on **Exhibit A** and requests that the Court reclassify  
23 these Claims as general unsecured Claims (albeit subject to possible additional objections).  
24 The USACM Trust also requests such other and further relief as is just and proper.

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2 Dated: March 23, 2007.  
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5 **LEWIS AND ROCA LLP**  
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7 By: /s/ RC (#6593)  
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